Supreme Court, U.S.

06-1[illegible] 2006

No. OFFICE OF THE CLERK

IN THE
SUPREME COURT OF THE UNITED STATES

CULPEPPER & CARROLL, PLLC
Petitioner,

v.

CONNIE D. COLE,
Respondent.

ON APPLICATION FOR
WRITS OF CERTIORARI AND/OR
WRITS OF REVIEW OF THE
SUPREME COURT OF THE
STATE OF LOUISIANA,
WHICH DECISION REVERSED
A DECISION OF THE
COURT OF APPEAL, SECOND CIRCUIT,
STATE OF LOUISIANA

PETITION FOR WRITS OF CERTIORARI AND/OR WRITS OF REVIEW

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QUESTIONS PRESENTED

1. Can a State deprive an attorney of attorney's fees in a contingent fee contract where the client agrees to a settlement and then changes his mind?

2. Does an attorney have any property rights protected by the United States Constitution in a contingent fee contract?

3. Can a State Supreme Court fail to follow jurisprudence and statutes and rely on Rules of Professional Conduct (administrative rules) to deprive an attorney of attorney's fees?

4. Can a State Supreme Court disregard its own rules governing Application for Writs, content of briefs and time schedule in order to assist a litigant in not having to pay attorney's fees under contingent fee contract?

LIST OF PARTIES

The parties below are listed in the caption.

Culpepper & Carroll, PLLC

Connie D. Cole

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OPINION BELOW

Connie Daniel Cole registered a complaint with the Office of the Disciplinary Counsel, Louisiana Attorney Disciplinary Board in connection with Bobby L. Culpepper not following his instructions as to the handling of a case, after Mr. Cole had changed his mind and decided not to settle. The Louisiana Attorney Disciplinary Board in a letter dated April 30, 2003 found that no formal disciplinary action was appropriate.

Thereafter, Culpepper & Carroll, PLLC filed a petition for attorney's fees in the Ruston City Court, Ruston, Louisiana. A Judgment for attorney's fees in the amount of $6,950.01 was rendered by the Ruston City Court, with the Judgment being signed on the 14th day of July, 2004.

Mr. Cole appealed in forma pauperis to the Second Circuit Court of Appeal of the State of Louisiana. While said appeal was granted, the Second Circuit Court of Appeal of the State of Louisiana affirmed a decision of the First Judicial District Court, Parish of Caddo, State of Louisiana, failing to invalidate the Last Will and Testament of Mr. Cole's mother, Mrs. Annie Ruth Conley Cole Brown. See *Succession of Annie Ruth Conley Cole Brown* (La. App. 2 Cir. 10/27/04), 886 So. 2d 633. The *Succession of Brown* involved Mr. Cole, after Mr. Culpepper had refused to pursue the case and after a second attorney had refused the case, representing himself in District Court and losing the case that forms the background of this entire matter.

That the matter was briefed and argued in the Second Circuit Court of Appeal, State of Louisiana, with the decision being handed down on March 9, 2005 with two Judges agreeing on the decision affirming the Ruston City Court, and one Judge dissenting. Mr. Cole filed an Application for a Re-Hearing which was denied on March

31, 2005, with three Judges agreeing with the original opinion and two Judges voting to grant a re-hearing.

Mr. Cole filed an Application for Writs with the Louisiana Supreme Court which were granted. A decision was rendered by the Louisiana Supreme Court on April 4, 2006. Believe it or not, the decision was a "per curiam" decision.

Culpepper & Carroll, PLLC timely applied for a re-hearing which was denied by the Louisiana Supreme Court on the 23rd day of June, 2006.

STATEMENT OF JURISDICTION

The Supreme Court of the State of Louisiana denied the Application for a Re-Hearing on June 23, 2006, as set forth hereinabove.

Pursuant to 28 Federal Rules of Civil Procedure, 1257, your petitioner seeks a review of the Supreme Court of the State of Louisiana decision which reversed a decision of the Second Circuit Court of Appeal, State of Louisiana and apparently disagreed with the decision of the Louisiana Attorney Disciplinary Board although denying Connie Cole's Application for an Appeal of the decision of the Disciplinary Board.

This matter is of the utmost importance to any attorney in the United States who handles contingent fee contract cases. Its importance is noted by the fact that the writer has been contacted by the *American Bar Association Journal* and the ruling of the Supreme Court has been publicized on the front page of the New Orleans *Times Picayune* and has been the subject of discussion at ethic seminars and judges meetings in the State of Louisiana.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

U. S. Constitution, Amendment 14.

. . . No State shall . . . deprive any person of life, liberty, or property, without due process of law; . . .

42 U.S.C Sec. 1983.

Every person has a claim secured by the Constitution and laws of the United States of America for the deprivation of any rights.

La. R.S. 37:218.

"By written agreement signed by his client, an attorney at law may acquire as his fee an interest in the subject matter of a suit . . ."

Louisiana Civil Code Article 2014.

A contract may not be dissolved when the obligor has rendered a substantial part of the performance and the part not rendered does not substantially impair the interest of the obligee.

Louisiana Civil Code Article 2018.

Upon dissolution of a contract, the parties shall be restored to the situation that existed before the contract was made. If restoration in kind is impossible or impracticable, the court may award damages.

If partial performance has been rendered and that performance is of value to the party seeking to dissolve the contract, the dissolution does not preclude recovery for that performance, whether in contract or quasi-contract.

Louisiana Civil Code Article 3010.

The principal is bound to the mandatary to perform the obligations that the mandatary contracted within the limits of his authority. The principal is also bound to the mandatary for obligations contracted by the mandatary after the termination of the mandate if at the time of contracting the mandatary did not know that the mandate had terminated.

The principal is not bound to the mandatary to perform the obligations that the mandatary contracted which exceed the limits of the mandatary's authority unless the principal ratifies those acts.

Louisiana Civil Code Article 3012.

The principal is bound to reimburse the mandatary for the expenses and charges he has incurred and to pay him the remuneration to which he is entitled.

The principal is bound to reimburse and pay the mandatary even though without the mandatary's fault the purpose of the mandate was not accomplished.

Louisiana Civil Code Article 3020.

The principal is bound to perform the contract that the mandatary, acting within the limits of his authority, makes with a third person.

Louisiana Civil Code Article 3028.

The principal must notify third persons with whom the mandatary was authorized to contract of the revocation of the mandate or of the mandatary's authority. If the principal fails to do so, he is bound to perform the obligations that the mandatary has undertaken.

STATEMENT OF THE CASE

Following the dismissal of the complaint by the Office of the Disciplinary Counsel under Louisiana Attorney Disciplinary Board, demand was made upon Mr. Cole for payment of one-third (1/3) of the amount of $21,600.03 which was the amount of the proposed settlement. Mr. Cole refused to pay anything.

We will now quote directly from the facts found by the Court of Appeal:

> "On April 12, 2004, Culpepper & Carroll, PLLC ("Culpepper"), filed a petition on open account in Ruston City Court against Connie D. Cole ("Cole") seeking $6,950.01, plus legal interest, together with an additional 25 percent on both the principal and interest as attorney's fees. Attached to the petition were a November 12, 2004 demand letter and a November 3, 2003 invoice in the amount of $6,950.01 for attorney's fees in connection with a matter entitled 'Succession of Annie Ruth Brown.' The invoice indicated that the balance due was calculated by taking one-third of $21,600.03 and subtracting from it a $250.00 credit, representing advance court costs paid by Cole. Evidence adduced at the subsequent trial showed that the $21,600.03 represented the amount of a settlement that Culpepper had negotiated with opposing counsel in the succession matter in which Culpepper represented Cole. Thus, the $6,950.01 represented a fee Culpepper claimed had been earned pursuant to a contingent fee contract entered into between Culpepper and Cole.

Cole filed an answer stating that 'Mr. Culpepper did this on a contingency fee basis,' that Culpepper 'quit the case' and that Cole paid Culpepper for court costs, but Culpepper 'would not go to court.' In a written explanation of his answer, Cole admitted that he consulted with Culpepper on the succession of Annie Ruth Brown, but Cole asserted that he refused any more consultation from Culpepper and pursued the case on his own behalf. He stated that the settlement amount that Culpepper had attempted to get Cole to accept left Cole 'feeling as if his counsel was unfaithful and leaving him virtually unrepresented.' Cole attached to this answer a copy of a letter from Culpepper to Cole dated September 20, 2000. The letter indicated that Culpepper would handle Cole's legal representation in the succession of Annie Ruth Brown on a contingent fee basis for 'one-third of whatever additional property or money we can get for you.' The letter also acknowledged that Cole had already advanced $250.00 for estimated court costs. The letter then discussed legal issues that Culpepper considered pertinent in the matter, noted that the net value of the estate was $183,000 and indicated that Culpepper considered one-eighth of the estate, or $22,900, to be the maximum Cole could get if Cole could be considered a forced heir. Thus, Culpepper's letter indicated to Cole that, since Cole already had received $2,500 in value, $20,400 would be the maximum amount Cole could expect to win in the case.

In addition, the letter indicated that Culpepper probably could get opposing counsel to recommend a settlement to his clients, although they obviously would not pay the entire amount because the law

was unclear concerning forced heirship issues under the facts of this case.

When the matter came on for trial on July 14, 2004, counsel for Culpepper first called Cole as an adverse witness. Cole generally was unresponsive as a witness, but did make some critical admissions. Cole admitted that, under the 'so-called' will, Cole would have received $2,500 in land, and Cole remembered Culpepper 'saying something about if I got a one-eighth interest, but you also told me I didn't qualify for that.' Cole then was asked if his counsel had informed him that the estate was willing to pay Cole an additional $21,603 in real estate. Cole responded affirmatively, but stated that he was unsatisfied with that figure. Cole testified as follows regarding the contingent fee agreement:

> Q: (by Culpepper) Okay, but when you came to see me, you didn't have money to pay on an hourly basis. You wanted me to charge a contingent fee of one-third of whatever additional amount of money I could get the people to agreed to pay you voluntarily or through court, did you not?
>
> A: (Cole) On, on a -- uh, we agreed on a contingent fee.

Cole was then asked if he had given counsel the authority 'to go ahead and make the best settlement that we could' based upon counsel's opinion that if the case went to trial, Cole would lose and would get no more money. Cole responded, '[t]hat's based on your opinion, but on my opinion, I believe that, uh, I would get more.'

When asked if Cole had terminated his counsel's services, Cole responded that he did not know, but that he had asked counsel 'off of the case.' Cole also admitted reporting his counsel to the Bar Association after counsel 'quit,' and that, after retaining new counsel, Cole eventually reported him to the Bar Association as well. Cole also admitted reporting the attorney representing the estate to the Bar Association.

Finally, when asked if he had received a certified letter demanding payment of the $6,950.01, Cole indicated that he received a certified letter, but stated, 'I don't exactly recall what was on the certified letter. . .'

The next witness was Bobby Culpepper of the plaintiff law firm. Culpepper indicated that Cole had first contacted his office in 2000 to complain about Cole's mother's will which had left him only $2,500. According to Culpepper, Cole felt that he should be a forced heir, and there was some discussion concerning whether the forced part would be one-eighth or less than one-eighth. Culpepper testified that he concluded Cole's share probably would be less than one-eighth; but, if Cole received one-eighth of the estate, his share would have been $22,900, so that when the $2,500 was subtracted, Cole stood to get an additional $20,400. Culpepper testified that, after doing substantial research, he determined that Cole could not win. According to Culpepper, Cole 'authorized me, at that time, to work out the best settlement that we could work out.'

Culpepper then negotiated a settlement in which Cole would get property worth an additional

$21,600, which was more than Cole would get if he had been able to establish that he was a forced heir. Culpepper, however, testified that, when the time came to sign settlement papers, Cole would not sign. Culpepper then informed Cole that, because Culpepper did not think Cole could win the case, Culpepper was not going to litigate something 'that I felt could not be won and particularly when we were getting more than we would get if we won.' Culpepper then sent Cole certified demand letters seeking the $6,950.01 representing one-third of the additional value of the property which Cole would have received if he had accepted his counsel's recommendation.

The court asked Mr. Culpepper if there was a written contract for the contingent fee agreement. Mr. Culpepper responded:

> We had a letter agreement, Your Honor. A letter dated September 20, 2000 is attached to his lawsuit. The first paragraph of that as per our agreement handles this matter on a contingency fee basis of one-third of whatever additional property or money we can get for you. And he was agreeable to that because he could not afford to pay on any hourly basis, so he-- and, in fact, in papers that are attached to his--to his answer, Your Honor, defendant's answer, he said Mr. Culpepper did this on a contingency fee basis, so there's no question about being an agreement. The, uh, disciplinary board found that there was a contingency fee contract.

When Mr. Cole took the stand on his own behalf, the court asked him if he asked Mr. Culpepper for

a contingent fee arrangement, to which Cole responded, 'I asked for a contingency fee arrangement.' The court asked Cole if Mr. Culpepper had explained to him that he would 'try to get whatever he could,' and whether he explained to Cole why Cole did not need to go to court in the case. Cole responded:

> He told me, and I felt that, you know, we could go to court and I felt we could win if I had representation.

After hearing closing statements, the court concluded that the evidence showed a 'contingency fee was present' based on the record, including attachments, letters, testimony in open court and the written admission in Cole's answer that there was a contingent fee arrangement. The court noted that the 'work was accomplished' and further noted that, according to the testimony, the results obtained would have been better than if the case had gone to trial on the issue of forced heirship. Thus, the court was satisfied that the plaintiff had met the burden of proof. This appeal followed."

ARGUMENT

1. Can a State deprive an attorney of attorney's fees in a contingent fee contract where the client agrees to a settlement and then changes his mind?

The Louisiana Supreme Court in the case of *Saucier vs. Hayes Dairy Products*, 373 So. 2d 102 (La. 1979), stated that the holding would "likewise thwart the client's last minute attempt to supplant his original attorney with another or to proceed in proper person so as to obviate responsibility for payment of a contingent fee after substantially all of the legal services contemplated by the contract have been performed and settlement or judgment has been obtained or is imminent." That rationale certainly applies to this case because that is exactly what took place. Additionally, in the case of *Frances vs. Hotard and Audubon Insurance Company*, 798 So. 2d 982, 2000-0302 (La. App. 1st Cir. 03/20/01), the Court found that the attorney continued to have a cause of action for fees against his former client even though the client had subsequently moved to dismiss his suit for damages. In the case of *Menard vs. Hyatt*, 773 So. 2d 908, 00-1047 (La. App. 3d Cir. 12/6/00), the Court found that, due to the express language of the contingency agreement, the attorney was not entitled to recover expenses which he had incurred during his representation in the absence of a judgment or settlement. Unlike the contingency agreement in our case, the contingency agreement at issue therein provided for payment out of settlement or judgment. The Third Circuit has confirmed that, an apportionment of attorney's fees between subsequent attorneys, one of the critical determinations of fact is whether or not settlement was imminent. *Syrie vs. Schilab*, 664 So. 2d 529 95-491 (La. App. 3d Cir. 11/02/95). Also, in the case of *Gordon vs. Levet*, 643 So. 2d 371, 94-279 (La. App. 5th Cir. 09/27/94), the Court found that the initial attorney's fees were

"effectively earned" when he received in settlement documents from the insurance company.

The failure to agree to settle the case was not raised as a defense at any point and is not a valid defense. Mr. Cole simply changed his mind at some point in time after giving Culpepper the authority to negotiate the best settlement he could and after a settlement being negotiated. If this matter had been raised as a defense, there are numerous letters and in fact, settlement papers that would have been introduced into evidence.

The Louisiana Supreme Court apparently feels that a client has complete control in a contingency fee agreement contract. We do not find any jurisprudence to that effect. Under La. R.S. 27:218, the attorney actually acquires an interest in the subject matter. How would that give the client complete control? Although our contingency fee agreement doesn't not provide for a percentage over 50%, what would happen if it did? Would that give the attorney full control or who would have control?

In *Tschirn vs. Tschirn*, (La. App. 5th Cir. 11/14/90) 570 So. 2d 204, which was completely ignored by the Louisiana Supreme Court, both the Trial Court and the Court of Appeal stated "that the purpose of La. R.S. 37:218 is to protect the attorney, not to allow the client to deprive the attorney of his earned fee. . ."

The Court of Appeal cited the case of *Hayes vs. Rollins*, (La. App. 3d Cir. 7/21/83) 435 So. 2d 1151 in support of its position herein.

The *Hayes* case involved a situation where the client refused to sign the settlement agreement or endorse a check in the amount of $30,000.00 and suit was filed for the attorney's fees. Attorney's fees were denied in this matter

because it was determined that the attorney did not have the authority to settle the case. The *Hayes* court noted:

> ". . . The record in this case is totally devoid of any evidence demonstrating that the defendant ever consented in any manner whatsoever to the settlement confected by the plaintiff (attorney.) Thus the District Court was correct in determining there was no settlement of the defendant's claim."

In the instant matter, the Court of Appeal determined that there was consent to settle.

The *Hayes* case cites the case of *Doucet vs. Standard Supply & Hardware Company*, (La. App. 3d Cir. 1971), 250 So. 2d 549. In the *Doucet* case, the client agreed to settle and then changed his mind and fired the attorney and employed other counsel to represent him. There is no evidence whatsoever that the case was ever settled. There was a jury trial where the jury awarded attorney's fees. The award was affirmed by the Court of Appeal. That case is on all fours with the instant case. In fact, the instant case is stronger than the *Doucet* case because in the instant case, it was a case that could not be won and that was not at the district level or the Court of Appeal level.

This Honorable Court is called upon to determine a question of property rights insofar as attorneys are concerned and must determine whether or not an attorney has any protection where the client is entirely unreasonable. That is the situation in the instant case and the court records, including the adverse Court of Appeal decision in *Succession of Brown*, (La. App. 2d Cir. 2004), 886 So. 2d 633 shows that. Instead of receiving $21,603.00, Mr. Cole received zero. Mr. Cole was fully advised as to what the law was by Culpepper; gave approval to settle the case, then changed his mind. Who should be penalized - Cole or Culpepper?

The Supreme Court of the State of Louisiana relied on its decision in *Saucier vs. Hayes Dairy Products* (La. 12/15/78), 373 So. 2d 102. That case is an interesting case, but is not authority for denial of liability in the instant case. In the *Saucier* case, according to Chief Justice Sanders:

> "The issue presented is whether an attorney discharged by his client without cause prior to the completion of his services is entitled to the percentage fee stipulated in his contingent fee contract, drawn and recorded in conformity with LSA-R.S. 37:218, when the client subsequently recovers from the adverse party. The Court of Appeal allowed recovery. We affirm."

What the original decision of the Supreme Court of the State of Louisiana did in that case, as pointed out by Justice Dennis in a dissent concurred in by Justices Calogero and Tate, was to divide the recovery of $75,000.00 with the plaintiff getting one-third and each of the attorneys getting one-third, whereas the original contingent fee agreement was for only one-third. The client ended up paying twice the contingency fee agreement.

Now Chief Justice Calogero of the Supreme Court of the State of Louisiana on re-hearing, noted a change in the composition of the Court and held (rightfully so) that the client should only have to pay one contingency fee of one-third, not two and there should be some division between the lawyers of the one-third. Justices Summers, Dixon and Marcus dissented.

A question similar to the question raised in this case was presented in the case of *Smith vs. Ford Motor Company*, 1999 U. S. Dist. Lexis 13037 in which former counsel for plaintiff filed a motion to enforce the settlement of the action arising from plaintiff's injury caused by a faulty lift-gate on a

truck manufactured by the defendant. In that case plaintiff agreed to a settlement in writing but wrote a letter to her attorney the same day rejecting the settlement. The Court enforced the settlement.

Also, consideration should be given to the case of *Williams vs. Vito*, 365 N.J. Super. 225; 838 A. 2d 556; 2003 N.J. Super. Lexis 403 in which the overview of that case states as follows:

> "The victim testified that he rejected the $10,000.00 offered by the motorist, but his counsel claimed the victim accepted the offer. The day after the settlement, the victim called his counsel and said he wanted to go to trial. The court found the victim had reluctantly accepted the offer. The settlement could not be repudiated on grounds of gross inadequacy of consideration, as $10,000.00 was not clearly inadequate, since (1) as the seriousness of plaintiff's injuries was in question, and there was evidence he had a pre-existing condition, he might not have been able to surmount the verbal threshold; (2) policy limits were $25,000.00; (3) the victim's counsel, an experienced trial lawyer, would presumably have advised him to reject the offer if he felt it were clearly inadequate. That the settlement was oral did not make it unenforceable. A contrary rule would mean that attorneys and judges could not rely on a telephone message that a settlement was consummated. Finally, as there was an apparent miscommunication between the victim and counsel as to whether the amount was gross or net, it was fairer to make counsel bear the burden. Thus, the entire $10,000.00 had to be paid to the victim."

This was not a case where there was a chance at the trial that Mr. Cole would get more money. The chance of getting anything except what the Will gave him at the trial was zero. In fact, there was a trial where he got zero.

This is not a case where no offer to settle was made, but Culpepper still thought he should get paid without going through a trial. An offer was made in the amount of $21,600.00 more than the Will gave Mr. Cole. This offer was a negotiated offer after Mr. Cole had authorized Culpepper to make the best deal that could be made. This is not a case where the case might have been won on appeal. There was an appeal and Mr. Cole lost.

This was not a case where a nominal amount, cost to defend type settlement, 50% of judgment value, even 100% of judgment value was offered. More than judgment value was offered and initially accepted with Mr. Cole later changing his mind.

Culpepper wanted to do this matter on an hourly basis. Mr. Cole had no money and had already been turned down by a very competent attorney. Mr. Cole wanted a contingent fee agreement.

Can a client orchestrate a contingent fee agreement, refuse a settlement for more than the amount he would get if he won the case, refuse a settlement after authority is given by him to settle, gamble and lose, thus destroying the contingent fee agreement and leave the attorney holding the bag? Is that what a contingent fee agreement is supposed to do? I do not believe so and do not believe that this Honorable Court will so rule.

Apparently, what Mr. Cole wanted was to have a trial at Culpepper's expense - come hail or high water! The money apparently did not make him any difference. His family had

done him wrong so he wanted to force them through a trial and appeal - like he did - to get back at them. We do not believe this Honorable Court is going to approve that.

Was Culpepper supposed to drive 180 miles roundtrip, spend a day or two in court in Caddo Parish, lose the case, not even be able to collect expenses and have no remedy? Think about it!

The *Saucier* case is cited by the Supreme Court of the State of Louisiana for the proposition that a client has "a fundamental right to control the case" although the *Saucier* case does not say it. It does say that he has an absolute right to discharge the attorney, but it does not say that he can discharge the attorney and have no responsibility to pay attorney's fees.

What does the Supreme Court of the State of Louisiana mean when it says that a client has a "fundamental right to control the case?" Does it mean the following?

1. The client, who knows nothing about drafting petitions, can require an attorney to draft the petition however the client wants the petition drafted;

2. The client determines who will be witnesses;

3. The client determines what questions will be asked the witnesses;

4. The client determines what argument will be made to the Court, even if it makes no sense;

5. The client determines what experts will be utilized;

6 The client determines whether or not experts will even be utilized;

7. The client control what is put in the brief;

8. The client determines whether or not to file exceptions, affirmative defenses, etc.?

The Louisiana Supreme Court cited Rule 1.2 (A) of the Rules of Professional Conduct stating:

> "A lawyer shall abide a client's decision whether to settle a matter."

Undersigned counsel abided by the above rule and the case was not settled. The question is not whether or not an attorney has to abide by the client's decision to settle. The question in this case is that once a client has agreed to settle a case and a very favorable settlement is made, and the client then changes his mind in a case where the case is worth zero and that he cannot win the case, is the attorney entitled to recoup anything? Therefore, Rule 1.2(a), which is an administrative rule, does not support the decision of the Supreme Court of the State of Louisiana.

In this matter, Mr. Cole simply changed his mind and rejected the settlement. As a principal, he should be bound under the provisions of Louisiana Civil Code Articles 3010 and 3020.

The provisions of the Louisiana Civil Code dealing with contracts, i.e., Articles 2014 and 2018 and the Articles dealing with mandate (Article 3012) support our position in this matter. It does seem strange that this Honorable Court relies upon the rules of Professional Conduct (which we do not feel were properly applied) instead of upon the Civil Code. The Civil Code is statutory law, whereas the rules of Professional Conduct, according to the case previously cited, are administrative rules.

We would note that the fact that a client can terminate a mandate at any time (Louisiana Civil Code Article 3028) does not necessarily mean that he can dissolve or avoid attorney's fees.

2. Does an attorney have any property rights protected by the United States Constitution in a contingent fee contract?

We have previously quoted the provisions of La. R.S. 37:218 which give an attorney an interest in the subject matter of the suit. Obviously this is a property right which is protected by the 14th Amendment to the United States Constitution and 42 U.S.C. Section 1983.

3. Can a State Supreme Court fail to follow jurisprudence and statutes and rely on Rules of Professional Conduct (administrative rules) to deprive an attorney of attorney's fees?

Chief Justice Summers of the Louisiana Supreme Court, in a dissent in *Saucier*, supra, stated:

> ". . . The cannons of professional responsibility are merely 'administrative' rules to this court enacted to regulate the practice of law . . ."

With all due respect, the Supreme Court of the State of Louisiana instead of following statutory law or jurisprudential law has relied entirely upon a cannon of professional responsibility.

4. Can a State Supreme Court disregard its own rules governing Application for Writs, content of briefs and time schedule in order to assist a litigant in not having to pay attorney's fees under contingent fee contract?

The Louisiana Supreme Court did not follow its own rules in handling the Application for Writs, briefing and argument in this matter, in the following respects:

1. The writ application does not comply with Rule X which is mandatory - note the use of the word "shall". There was no argument on the assignment of errors and no summary. The index was incomplete. The attachments were incomplete.

2. No legal authority was cited by Mr. Cole in support of his position. He did cite Judge Judy and Judge Joe Brown.

3. The Southern University Legal Clinic was appointed to assist Mr. Cole and we question the authority for same.

4. The brief filed by the Southern University Legal Clinic was allowed to be filed six months after the original brief was due.

5. The Louisiana Supreme Court allowed a brief to make an untimely assignment of error not raised in the Writ Application.

6. At a minimum, the Supreme Court should have remanded, in accordance with the dissenting opinion in the Court of Appeal for hearing on quantum meruit.

In *Saucier*, this Court determined that the amount set forth in a contingent fee contract, not quantum meruit is the proper "frame of reference for fixing compensation for the attorney prematurely discharged without cause." It does not appear that this was really an issue. The Court chose a

method that would give the attorney greater compensation than a quantum meruit basis.

However, as later pointed out by this Honorable Court in *O'Rourke vs. Cairns*, (La. 1996), 683 So. 2d 697, in another very scholarly decision as opposed to the per curiam decision herein, the Court's ruling in *Saucier* actually resulted in awards that were on a quantum meruit basis. This is the situation dealt with in the *O'Rourke* case. In *O'Rourke*, the attorney was dismissed for cause. It seems that the award in the *O'Rourke* case was almost the exact same figure as if Mr. Belsom had been paid on an hourly basis. That hourly basis would have been $62,500.00. This Court approved a recovery of $61,800.00 or $309.00 per hour.

This Court talked about a "modified quantum meruit analysis." Again, we cannot understand either of these cases as standing for the proposition that in a case of this nature quantum meruit recovery should not or cannot be allowed.

CONCLUSION

The only conclusion that can be reached in this matter is that the Supreme Court of the State of Louisiana was wrong because of the multiplicity of reasons set forth in the argument herein. The decision should be reversed and the opinion of the Court of Appeal of the Second Circuit, State of Louisiana, should be re-instated, or, alternatively, the matter should be remanded to the Ruston City Court for hearing on quantum meruit or other theories of recovery.

Respectfully submitted,

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